

**ATTORNEY GENERAL  
STATE OF NEW HAMPSHIRE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

PHILIP T. MCLAUGHLIN  
ATTORNEY GENERAL



STEPHEN J. JUDGE  
DEPUTY ATTORNEY GENERAL

March 6, 2002

VIA FACSIMILE (603-627-8121)  
AND FIRST CLASS MAIL  
Thomas S. Burack, Esq.  
Sheehan, Phinney, Bass & Green, P.A.  
1000 Elm Street  
P.O. Box 3701  
Manchester, NH 03105

Re: Roads Corporation/Hillsborough By-Pass Project  
Hillsborough, New Hampshire

Dear Tom

Enclosed please find the executed Consent Agreement relative to the above referenced matter. As agreed, in addition to the remaining payments that will be made pursuant to the payment schedule under Paragraph 4, Roads has agreed under Paragraph 11 that it will withdraw the appeals pending before the Wetlands Council and the Water Council. I acknowledge receipt of the first payment of \$25,000, which has been deposited into the Wetlands Restoration Fund.

Thank you for your assistance in bringing this matter to an amicable resolution. If you have any questions, please do not hesitate to give me a call.

Very truly yours,

**COPY**

Richard W. Head, Attorney  
Environmental Protection Bureau  
(603) 271-3679

cc Harry Stewart, P.E., Director, Water Division  
Gretchen Rule, DES Legal Unit  
Mary Ann Tilton, Senior Enforcement Officer, Wetlands  
Ana Ford, Site Specific

THE STATE OF NEW HAMPSHIRE

Department of Environmental Services

v.

Roads Corporation

ADMINISTRATIVE FINE PROCEEDING  
No. AFC 02-0001

**CONSENT AGREEMENT**

WHEREAS, the State of New Hampshire, Department of Environmental Services (the “Department” or the “State”), has proposed an administrative fine against Roads Corporation (“Roads”) under RSA 482-A, 485-A:13 and 485-A:17;

WHEREAS, the Department is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH 03302;

WHEREAS, Roads is a Massachusetts corporation having a mailing address of 241 Treble Cove Road, North Billerica, MA 01862;

WHEREAS, Roads is one of three private companies contracted by the New Hampshire Department of Transportation (“NHDOT”) to construct a portion of the Hillsborough Route 9 By-Pass, NHDOT Project #10440E (the “By-Pass”);

WHEREAS, the State alleges that during construction of the By-Pass, Roads removed material from the By-Pass to three off-site disposal sites in Hillsborough, New Hampshire, identified on Town of Hillsborough Tax Maps as Map 11F, Lots 20 and 11 (the “DeLuca Site”), Map J, Lot 53 (the “Holdner Site”) and Tax Map 8, Lot 115 (the “Seymour Site”);

WHEREAS, the violations alleged by the State arise out of activities by Roads on the By-Pass, DeLuca, Holdner and Seymour Sites resulting in the unpermitted dredge and fill of

wetlands, unpermitted disturbance of terrain in excess of 100,000 square feet and the unpermitted discharge of sediment into waters of the State; and

WHEREAS, the parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Agreement (“Agreement”) without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Agreement;

NOW, THEREFORE, the parties agree as follows:

Roads agrees to pay the Department the amount of Seventy Five Thousand Dollars (\$75,000) as follows:

A. The amount of Twenty Five Thousand Dollars (\$25,000) for the alleged violations of RSA 482-A to be deposited in the Wetlands Restoration Fund and to be used by the Department for the purpose of restoration, research, investigation and enforcement relative to wetlands.

B. The amount of Fifty Thousand Dollars (\$50,000) for the alleged violations of RSA 485-A:13 and RSA 485-A:17, to be distributed as follows:

i. Twelve Thousand Five Hundred Dollars (\$12,500) to be deposited in the General Fund.

ii. Thirty Seven Thousand Five Hundred Dollars (\$37,500) to be held in escrow by the Attorney General’s Office and to be used by the Department at its sole discretion for work associated with the removal of the West Henniker Dam (f/k/a the Contoocook Valley Paper Co. Dam), a Department project to restore free flowing conditions to a portion of the Contoocook River. In the event a decision is made to not remove the West

Henniker Dam or that the money allocated for removal of the West Henniker Dam is not needed for the project, the Department shall use the money for another Supplemental Environmental Project chosen at its sole discretion.

3. All payments under this Agreement shall be by certified check, made payable to "Treasurer, State of New Hampshire." Payments shall be delivered to Richard W. Head, Environmental Protection Bureau, Office of the Attorney General, 33 Capitol Street, Concord, NH 03301.

4 All financial obligations under this Agreement (a total of \$75,000) shall be received by the State in accordance with the following schedule:

March 1, 2002:	\$25,000
April 1, 2002:	\$37,500
May 1, 2002:	\$12,500

Failure to make payment in accordance with this schedule shall result in the automatic imposition of a Five Hundred Dollar (\$500) per day stipulated penalty until such time as payment is made in full, including any accumulated stipulated penalties.

5. Neither Roads nor any affiliated company shall claim or obtain any federal or state income tax credit or other tax benefit arising from any payments made pursuant to this Agreement.

6. Roads will neither solicit nor generate any publicity relating to this Agreement. Any publicity generated by the State will state that the payments were made as part an administrative claim with no finding or admission of liability.

7 Roads agrees that this Agreement shall apply to and be binding upon Roads, its officers, directors, successors and assigns. Roads further agrees that this Agreement may be

entered and enforced in the New Hampshire Superior Court for Merrimack County, and Roads waives any right to object to such entry and enforcement.

8. Roads waives any right provided by statute, rule, or common law to a hearing or to appeal the Notices or this Agreement, including without limitation the right to a hearing under RSA 482-A:13 or RSA 485-A:22, V and the right to appeal to the New Hampshire Supreme Court under RSA 541

9. Except as stated in Paragraph 10 of this Agreement, the Department agrees not to seek further administrative fines, civil penalties or criminal penalties against Roads for any cause of action alleged in this Agreement or that might have been based on facts alleged in this Agreement, except to enforce this Agreement in Merrimack County Superior Court.

10. Nothing contained in this Agreement shall be deemed a waiver or limitation of the Department's right to seek restoration and/or mitigation of wetlands impacted by Roads arising out of Roads' activities at the By-Pass, Holdner, DeLuca or Seymour Sites. The Department specifically reserves the right to seek restoration and/or mitigation for any such impacts. Nothing contained in this Agreement shall be deemed a waiver of any defense Roads may have in any action for restoration and/or mitigation of wetlands impacted by activities on any of the affected properties. Nothing contained in this Agreement shall be deemed to be a waiver by the State of any civil, equitable or administrative claim it may have against any person or entity, other than Roads or its officers and employees, responsible for violations at the By-Pass, Holdner, DeLuca or Seymour Sites.

Within ten (10) business days of the effective date of this Agreement, Roads agrees to file a withdrawal of any and all administrative, civil or other appeals pending before

the Wetlands Council, Water Council and/or any other administrative or civil agency, board, council or court that arise out of work that is the subject of this Agreement.

12. Failure by the Department to promptly enforce any provision of this Agreement shall not be deemed a waiver of any rights of the Department to enforce that provision or any other provision.

13. This Agreement shall take effect on the day that the last party to sign the Agreement.

CONSENTED TO:

\_\_\_\_\_  
Roads Corporation, by  
*John Stewart*, its  
**COPY** 2-25-02

2-25-02  
Date

*Harry Stewart*  
**COPY**  
\_\_\_\_\_  
Harry Stewart, Director  
Water Division  
NH Department of Environmental Services

3/4/02  
Date

*G. Dana Bisbee*  
**COPY**  
\_\_\_\_\_  
G. Dana Bisbee, Assistant Commissioner  
NH Department of Environmental Services

3/4/02  
Date